

## **AGREEMENT**

**THIS AGREEMENT**, entered into in connection with the City of Fort Lauderdale RFP No. 232-8846, on 10/1 2004, by and between:

**MEDUSA MEDICAL TECHNOLOGIES INC.**, a body corporate incorporated under the laws of Nova Scotia, Canada, and authorized to transact business in the State of Florida ( "Supplier" or "MEDUSA")

and

**CITY OF FORT LAUDERDALE**, a Florida municipal corporation ("Customer" or "City")

**WHEREAS**, The City issued RFP No. 232-8846 for a Data Collection Equipment and Emergency Medical Reporting Software system, and by Motion, at its July 15<sup>th</sup>, 2003 meeting, the City Commission approved the award of contract under this RFP to MEDUSA: and

**WHEREAS**, the Supplier produces and supplies medical software and hardware with applications for emergency medical care; and

**WHEREAS**, the Customer provides public emergency medical services to the citizens of the City of Fort Lauderdale; and

**WHEREAS**, the Customer now desires to license such medical software and purchase certain services from the Supplier on the terms and conditions set out in this Agreement; and

**WHEREAS**, the Supplier represents itself as qualified to provide such services

**IN CONSIDERATION** of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. INTERPRETATION**

**1.1.** In this Agreement, including the schedules hereto, unless otherwise stated or the context otherwise requires, the following terms have the following meanings:

- (a) "Acceptance Date" means the date on which the Customer accepts the System, or is deemed to have accepted the System, in accordance with section 5;
- (b) "Agreement" means this agreement and all schedules attached hereto;

- (c) "RFP" means Request for Proposal submitted by MEDUSA to the City of Fort Lauderdale in response to proposal number 232-8846 which opened March 26, 2003;
- (d) "Business Day" means any day other than a day which is a Saturday, a Sunday or a statutory holiday in Halifax, Nova Scotia or in the United States of America or as recognized by the City of Fort Lauderdale;
- (e) "Confidential Information" has the meaning assigned in section 13.1;
- (f) "Customer Location" means the offices of the Customer located in Broward County Florida at 100 No Andrews Ave, Fort Lauderdale FL 33301; Fire Administration City of Fort Lauderdale Station #2, located at 528 NW 2nd Street, Fort Lauderdale FL 33311, City of Fort Lauderdale Police Department, located at 1300 W. Broward Blvd., Fort Lauderdale, FL 33312, as well as all City of Fort Lauderdale Fire Stations;
- (g) "Delivery Date" means the date on which all of the Software Modules, and Third Party Software have been delivered to the Customer;
- (h) "Escrow Agent" has the meaning assigned in Section 14;
- (i) "Initial Go Live Date" means the date that the all software modules, interfaces and enhancements per agreed upon scope of work have been completely installed and are operational;
- (j) "Performance Standards" has the meaning assigned to it in subsection 5.1(a);
- (k) "Purchase Price" has the meaning assigned in subsection 4.1(a);
- (l) "Response" means the MEDUSA Medical Technologies Inc.'s' Responses to Request for Proposal Data Collection Equipment and Emergency Medical Reporting Software Request for Proposal number 232-8846;
- (m) "Review Period" has the meaning assigned in subsection 5.1(a);
- (n) "Software" means each software product listed in Schedule A, including machine readable object code (not source code) for such software, any user documentation for such software, and any other documentation or materials which are furnished to the Customer by the Supplier for use in connection with such software, and for greater certainty excludes Third Party Software;
- (o) "Support" has the meaning assigned in subsection 8.1(a);
- (p) "Support Fee" means the fee for Support referred to in section 8.3;

- (q) "System" means the total complement of Software and Third Party Software furnished by the Supplier;
- (r) "Third Party Software" means third party software supplied with the Hardware as listed in Schedule A, together with any user documentation for such software supplied by the software owner or supplier with the software;
- (s) "Training/Implementation" has the meaning assigned in subsection 2.2(a);
- (t) "Update" means any correction, enhancement, replacement, evolution or new release of the Software, except those which include material changes in functionality and are designated by the Supplier as new products for which the Supplier charges separately; and
- (u) "Warranty Period" has the meaning assigned to it in Section 6.1.

- 1.2. Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of the United States of America.
- 1.3. Unless the context otherwise requires, words importing the singular include the plural and vice-versa and words importing gender include all genders.
- 1.4. The division of this Agreement into articles, sections and paragraphs and the insertion of headings and titles are provided for convenience of reference only and shall not affect the construction or interpretation hereof.
- 1.5. The following schedules which are attached to this Agreement are incorporated into this Agreement by reference and are deemed to be a part hereof:

Schedule	Subject
A	Software & Documentation
B	Travel Schedule
C	Purchase Price
D	Business Associate Agreement

In addition, the RFP and the Supplier's Response to the RFP are incorporated into this Agreement by reference and are deemed to be a part hereof.

## **2. DUTIES OF THE SUPPLIER**

### **2.1. Provision of System**

The Supplier shall provide the Customer with the Software together with the associated Third Party Software as set out in Schedule A as referenced in R.F.P. 232-8846 pages fifty-nine and sixty-eight. Up to and through the Initial Go Live Date all server installations of any MEDUSA software or its components shall be the responsibility of the Supplier. The Customer shall cooperate with and provide reasonable assistance to the Supplier in respect to any such installations. The Supplier covenants and agrees that the Supplier's employees who will perform the Supplier's obligations under this Agreement in the United States of America are authorized by the laws of the United States of America to perform the Supplier's obligations in the United States of America. In the event any of the Supplier's employees is/are denied entry into the United States of America the Supplier shall forthwith notify the Customer of such event, and the Supplier shall provide personnel of comparable qualifications and training who are authorized by the laws of the United States of America to perform the Supplier's obligations in the United States of America.

### **2.2. Training/Implementation**

- (a) The Supplier shall provide training and implementation services, as more particularly referenced in the response, to R.F.P. 232-8846, pages 22, 23 and 24, and further defined in schedule B.
- (b) All classroom training will take place at the Customer Location at times mutually acceptable to the Customer and the Supplier, each acting reasonably. All non-classroom training shall take place at locations and times acceptable to the Customer and the Supplier, each acting reasonably.
- (c) The Customer is responsible for all non-System computer and other equipment, facilities and personnel necessary for training, evaluation and testing of the System by the Customer.

## **3. SOFTWARE LICENSE**

### **3.1. General**

- (a) Subject to the terms and conditions of this Agreement, the Supplier hereby grants to the Customer a fully paid up, perpetual (subject to earlier termination as provided for in Section 15 of this Agreement), non-transferable and non-exclusive license to use the Software solely in the conduct of the business of the Customer.
- (b) Software shall be provided by the Supplier to the Customer pursuant to the terms of this Agreement only in machine readable object code.

- (c) The Customer acknowledges that by virtue of this license, the Customer acquires only the right to use the original and permitted duplicate copies of the Software as described herein and does not acquire any rights of ownership in the Software which rights shall remain exclusively with the Supplier.
- (d) The License shall commence on the Initial Go Live Date. During normal business hours and at any time during which the Software or other of the Supplier's proprietary information is being utilized by the Customer, the Supplier or its authorized representatives, shall have the right upon reasonable advance notice of fifteen days in writing and subject to the Customer's reasonable security requirements, and requirements and prohibitions contained in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and Florida public records law exemptions, to audit and inspect the Customer's utilization of such items, in order to verify compliance with the terms of this Agreement. The Supplier agrees to use its best efforts to prevent disruption of the Customer's business activities in connection with any such audit.
- (e) Nothing herein shall be construed to violate the State of Florida's Public Records Law, Chapter 119, Florida Statutes, exemptions there from or any other provisions of law governing public records.

### **3.2. Right to Copy**

No portion of the Software or any updates, modifications or enhancements to the Software may be duplicated by the Customer except as provided by applicable law, ordinance, or regulation, and except that the Customer may make copies of the machine readable portion thereof for normal security backup purposes. An additional copy of the software may be installed on a second server for testing and training purposes, per R.F.P. requirement section M page 23.

Customer may from time to time request in writing that Supplier develop customized software for the use of the Customer. If Supplier accepts, then a separate contract may be negotiated between the Customer and Supplier relating to the customized software including terms concerning who owns the customized software. The contract will also provide for delivery terms for the source code for such customized software and any documentation in connection with such customized software. For greater certainty this clause shall not apply to any updates, enhancements or other changes to the Software which shall remain the property of MEDUSA.

## **4. PAYMENT AND DELIVERY**

### **4.1. Purchase Price**

- (a) The Customer agrees to purchase the Training/Implementation and license for the Software and the Third Party Software for the aggregate price set out as items

A to F in Schedule C (the "Purchase Price"), payable in accordance with the Florida Prompt Payment Act as follows:

1. Software License and services as follows:

- (i) 30% - upon installation of the Software;
  - (ii) 20% - within 7 days of the completion of the On-site Training/Implementation;
  - (iii) 20% - within 7 days of the go-live date;
  - (iv) 30% - on the Acceptance Date.
- (b) The Purchase Price does not include any costs for any other equipment, materials, hardware or software not comprising the System, including but not limited to any costs for or associated with:
- (i) data servers and peripherals, except as shown in Schedule A;
  - (ii) wiring and installation of the System in rescue vehicles or engines including power supply hook up; or
  - (iii) modifications to the Customer's existing communication infrastructure.
- (c) The Customer shall be responsible for all costs associated with its own obligations under this Agreement, including but not limited to those costs set out in subsection 2.2 the provision of personnel, the supply of facilities and non-System equipment such as ambulances and training rooms.
- (d) MEDUSA agrees that the latest revision of the City's Travel Policy as cited in City's Policy and Standards Manual governs this Agreement and the services to be provided by MEDUSA, and MEDUSA agrees to the City's per diem rates, see Schedule B.

**4.2. Taxes**

- (a) The customer warrants to Supplier that it is a tax-exempt entity and shall provide Supplier with its tax-exempt certificate upon request.

**4.3. Delivery**

- (a) Shipments of the System and the components thereof shall be made by the Supplier to the Customer Location and shall be preserved, packed and marked in accordance with standard shipping practices.

- (b) The Customer shall receive all shipments from the Supplier and care for the same in a prudent manner.
- (c) The Supplier shall be responsible for all risks of loss or damage to the components of the System furnished under this Agreement until such components are delivered to the Customer Location, except for any loss or damage caused by or resulting directly from the negligence or wilful misconduct of the Customer or its employees.

## **5. ACCEPTANCE PROCEDURE**

### **5.1. Acceptance Procedure**

- (a) After all software modules have been installed and are operational the supplier and customer shall mutually agree upon an initial go live date. The Customer shall have a period of 90 (ninety days) after the Initial Go Live Date (the "Review Period") to determine if the System conforms to the RFP requirements ("Performance Standards"). Performance trial and acceptance testing shall be based on the system, including all software modules and interfaces being fully and consistently operational for a period of not less than ninety (90) continuous working days.
- (b) Within five (5) days after the end of the Review Period the Customer shall:
  - (i) Notify the Supplier that it has accepted the System; or
  - (ii) Request the Supplier in writing to correct all deficiencies in the performance of the System which violate the RFP requirements or the performance standards and of which the Customer provides notice to the Supplier, in which case the Supplier shall correct the deficiencies within 30 (thirty) days by bringing the performance of the System into compliance with the RFP requirements and the Performance Standards.
- (c) If, within five days after the end of the Review Period, the Customer does not provide the Supplier with notice in accordance with 5(b) (i) or a request in accordance with 5(b) (ii), the Customer shall be deemed to have accepted the System.
- (d) If the Supplier is not able to fulfill its obligation contained in subsection 5(b) (ii), the Customer shall have the right, at its option, to terminate this Agreement and receive a refund of that portion of the Purchase Price that has been paid to the Supplier.
- (e) The letter of credit described under section 6.2 will be returned to the Supplier on notification in writing by the Customer that it has accepted the system under

section 5.1 (b), or on deemed acceptance under section 5.1 (c), or on termination and payment of a refund in compliance with section 5.1 (d).

## **6. SOFTWARE WARRANTY**

### **6.1. Warranty Period; Software Warranty**

The Supplier warrants that the Software will conform to the Performance Standards for one year directly following the Acceptance Date (the "Warranty Period") and will perform, when used in accordance with its operating instructions, in accordance with the Performance Standards. The Supplier's warranty is subject to the Customer providing the Supplier necessary access to the System, excluding data exempt from the Florida public records law and protected health information under HIPAA, but including, without limitation, the Software. For greater certainty, the Software Warranty covers the Software only, and does not apply to, and the Supplier provides no warranty in respect of, the Hardware or the Third Party Software, but shall use reasonable efforts to assist the Customer in making claims in respect of any warranties provided by the manufacturer of the Hardware and the licensor(s) of the Third Party Software.

### **6.2. Customer's Defect Reports**

The Customer must specifically identify to the Supplier the nature of any Software defect that causes the Software not to conform to the Performance Standards and specifically describe the conditions under which the defect occurs. On the Supplier's request, the Customer shall provide such information in writing. The Supplier shall have thirty (30) days (or such longer time as both parties agree, acting reasonably) following Supplier's receipt of the City's oral or written notice of defect within which to eliminate the defect and conform the Software to the Performance Standards, the first fifteen (15) days that are business days for the City of Fort Lauderdale, of which shall be for Supplier to duplicate the problem and to verify that the problem is with the Software. In the event the Supplier fails to conform the Software to the Performance Standards within the thirty-day period the Customer may cancel this Agreement, whereupon the Supplier shall refund to the Customer all funds previously paid the Supplier pursuant to this Agreement.

It shall be a condition of this Agreement that before commencing any work, to secure performance, MEDUSA shall provide to the Customer a performance bond issued by a reputable surety company authorized to do business in the State of Florida, and approved by the Customer or the Customer's attorney, or an irrevocable letter of credit, payable upon demand in the event of the Supplier's breach of this Agreement, drawn on a reputable financial institution located within fifty (50) miles of Fort Lauderdale, Florida, authorized to do business in the State of Florida, and approved by the Customer or the Customer's attorney, in the amount specified in the Request for Proposals.

### **6.3. Scope of the Warranty**

(a) The warranty set forth in this section 6 shall not apply:



- (i) if the Software is not used in accordance with its operating instructions;
- (ii) to any extensions or modifications to the Software not approved or authorized by the Supplier;
- (iii) if the Software is not installed on hardware approved by the Supplier;
- (iv) to the extent that the defect is caused by the Customer;
- (v) if the Customer does not provide necessary access to the System as required under section 2.1; or
- (vi) if the defect is caused by a Third Party Software malfunction or other software not supplied by the Supplier.

The Supplier does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors which do not materially affect such performance, except that Supplier does warrant that any interruptions in the Software's operation shall not be more frequent than occasional and shall not exceed periods of twenty-four (24) hours.

## **7. GENERAL REPRESENTATIONS AND WARRANTIES**

### **7.1. Other System Warranties**

The Supplier warrants that it has the right to license the Software.

### **7.2. Supplier's General Representations and Warranties**

The Supplier represents, warrants and covenants to the Customer that:

- (a) it has full power and authority to enter into this Agreement and to grant the Customer all the rights granted hereunder;
- (b) it is duly incorporated and existing under the laws of Nova Scotia and properly registered to transact business in the State of Florida;
- (c) the execution of this Agreement will not breach or interfere with any other agreement which the Supplier has entered into;
- (d) it shall not enter into another agreement, the carrying out of which would interfere with the carrying out of this Agreement; and
- (e) the entering into of this Agreement and the transactions contemplated hereby will not result in the violation of any of the terms and provisions of the memorandum and articles of association of the Supplier or of any indenture or other agreement,

written or oral, to which the Supplier is a party or bound, or any applicable law, regulation, by-law, ordinance or order.

### **7.3. Customer's General Representations and Warranties**

The Customer represents, warrants and covenants to the Supplier that:

- (a) it has full power and authority to enter into this Agreement;
- (b) it is a Florida municipal corporation;
- (c) the execution of this Agreement will not breach or interfere with any other agreement to which the Customer has entered into;
- (d) it shall not enter into another agreement, the carrying out of which would interfere with the carrying out of this Agreement;
- (e) the entering into of this Agreement and the transactions contemplated hereby will not result in the violation of any of the terms and provisions of the City of Fort Lauderdale municipal charter or of any indenture or other agreement, written or oral, to which the Customer is a party or bound, or any applicable law, regulation, by-law, ordinance or order; and
- (f) the Customer shall act expeditiously, cooperatively and in good faith in effecting the installation and deployment of the System.

7.4. The warranties set forth in this section 7 shall be applicable for so long as this Agreement is in full force and effect.

## **8. SUPPORT**

### **8.1. Support Service**

- (a) The Customer hereby subscribes for support service ("Support") with respect to the Software commencing on the expiration of the Warranty Period. Support by the Supplier, unless expressly agreed otherwise in writing, is limited to the Customer Location. Support consists of the delivery of Updates, support via telephone on a twenty-four hours per day, seven days per week basis, and the correction of defects.
- (b) The Supplier shall provide, and the Customer is encouraged to install on its systems the most up to date versions of the system. MEDUSA can only provide support for the most recent version of the system and the two prior updates of it.

- (c) The Supplier agrees not to terminate Support, except in the event of the Customer's termination of the Support portion of this Agreement or Customer's failure to pay Supplier as set forth in this Agreement, for so long as the Supplier makes Support available to its customers who have purchased the Software.

## **8.2. Updates**

Upon the Customer's request and provided that the Customer has purchased Support from the Supplier, the Supplier shall deliver Updates to the Customer Locations for which the Supplier has Support responsibility. MEDUSA shall, as part of its obligation to provide support, and at no additional cost other than the price paid by the customer for support, complete and deliver to the customer changes to the software that are required to comply with changes to the State of Florida reporting requirements applicable to the customer. In the event the customer terminates support payments, MEDUSA shall have no further obligation under this section.

## **8.3. Payment of Support Fees**

Upon the conclusion of the first year's Support, Fees, in the amount set out in Schedule C, for each one-year Support Period thereafter shall be paid in accordance with the Florida Prompt Payment Act, unless Customer declines in writing to renew this service prior to commencement of the new period.

## **8.4. Renewal and Termination of Support**

Support shall be automatically renewed on an annual basis ("Renewal Date"), and, subject to subsection 8.1(c), may only be terminated by the Customer in writing at least ninety days prior to the Renewal Date.

# **9. LIMITATION OF LIABILITY**

## **9.1. Customer's Remedies**

Subject to the limited warranty set forth in sections 6 and 7, the Customer's sole and exclusive remedies for any damages or loss in any way connected with this Agreement, the System or services furnished by the Supplier, whether due to the Supplier's negligence, gross negligence or breach of any other duty, shall be replacement of the Software or performance of services. If such Software or services cannot reasonably be replaced or performed despite the Supplier's best efforts to do so, the Supplier shall return or credit any appropriate portion of any payment made or to be made by the Customer with respect to the applicable portion of the Software or service. The foregoing limitation of liability does not apply to infringement of the property rights referred to in section 10.2(a). In any event, and notwithstanding anything herein to the contrary except as provided in the preceding sentence, the maximum aggregate liability of the Supplier to the Customer under this Agreement shall be the sum equal to the aggregate payments actually made by the Customer to the Supplier under this Agreement.

## **9.2. Supplier Not Responsible**

The Supplier shall not be responsible under this Agreement for:

- (a) the modification or improvement of the Software to fit the particular requirements of the Customer, otherwise than as expressly provided for in this Agreement and the RFP; or
- (b) the correction of any program errors resulting from modifications or extensions, otherwise than as expressly provided for in this Agreement or included in updated versions of the software; or
- (c) the correction of any program errors as a result of misuse of the Software, the Third Party Software or the Hardware by the Customer.

## **9.3. Severability**

If any term or provision contained in this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or unenforceable, such term or provision shall be considered independent and severable from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

## **9.4. Actions**

The Customer acknowledges and agrees that the System and each component thereof, and each element of data captured or manipulated thereby, is intended for, and shall only be used for, records purposes, and not under any circumstances for diagnostic or treatment purposes.

# **10. INDEMNIFICATION**

## **10.1. Supplier Representation**

The Supplier represents that the Supplier owns the Software, including all intellectual property rights therein, and that the Supplier has all rights necessary to license, in accordance with the terms of this Agreement, such Software to the Customer.

## **10.2. Indemnification of the Customer**

- (a) The Supplier shall defend, hold harmless, and indemnify the Customer against all claims, liabilities, judgments, and awards of costs and attorney fees, counsel to be provided at Supplier's expense and subject to Customer's approval, in connection with any claim brought against the Customer in the United States or elsewhere by any third party alleging that the Customer's use of the Software infringes or misappropriates;
  - (i) any patent of which the Supplier is or should reasonably be aware; or

- (ii) any copyright; or
  - (iii) trade secret right.
- (b) The Supplier shall indemnify, hold harmless, and defend at Supplier's expense, counsel being subject to Customer's approval, the Customer, and the Customer's officers, employees and agents, from and against any and all claims for damages, costs, third party claims, judgments, and expense to persons or property that may arise out of, or be occasioned by, any negligent, reckless, or intentional act or omission of the Supplier, or any negligent, reckless, or intentional act or omission of the Supplier's officers, employees or agents, and the Supplier shall indemnify the Customer against any such claims and any judgments that may be entered in connection therewith, including court costs and attorney fees. The Customer agrees to notify the Supplier in writing of the existence of any claim or lawsuit related to this paragraph of which the Customer becomes aware. The Customer agrees not to use the Software in a manner inconsistent with the terms of this Agreement.

## **11. PROPRIETARY RIGHTS**

### **11.1. Supplier Proprietary Information**

- (a) The parties are on notice that the Public Records Law of Florida (Chapter 119, Florida Statutes) and any other applicable statutes, laws and regulations, including HIPAA, governing the disclosure of records apply to this Agreement. Not all information referenced in this Agreement is "proprietary." The Florida Statutes provide for those documents, codes, programs, and text that is exempt from disclosure as trade secret under the Public Records Law.
- (b) The Customer acknowledges that ownership of and title in and to the Software and all intellectual property rights, including patent, trademark, service mark, copyright and trade secret rights in the Software are and shall remain in the Supplier. The Customer acquires only the right to use the Software under the terms and conditions of this Agreement and does not acquire any ownership rights or title in or to the Software.
- (c) The Customer shall not copy, to the extent it is data processing software and a trade secret pursuant to Florida law, or translate, disassemble or decompile nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software, or use it to create a derivative work, unless authorized in writing by the Supplier. Other than as specified herein, any tools licensed with or included in the Software, to the extent data processing software and trade secrets pursuant to Florida law, may not be copied, in whole or in part, without the express written consent of the Supplier.

- (d) The Customer shall not remove any proprietary, copyright, trademark or service mark legend from the Software or Third Party Software.
- (e) The Customer shall maintain a log of the number and location of all originals and copies of the Software. The inclusion of a copyright notice on any portion of the Software or Third Party Software shall not cause or be construed to cause it to be a published work.
- (f) All modifications and extensions to the Software shall be considered part of the Software for the purposes of this section 11.

## **12. INSURANCE**

The Supplier shall, as a condition precedent to this Agreement, provide to the Customer's risk manager proof of required insurance, with covenants providing coverage within the United States geographical boundaries, and the Supplier shall maintain during the entire term of this Agreement such insurance as required on page twelve of the City of Fort Lauderdale Request for Proposal 232-8846, issued by a reputable insurance company authorized to issue insurance policies in the State of Florida, and having an agent resident in the State of Florida.

## **13. CONFIDENTIALITY OBLIGATIONS**

### **13.1 Definition of Confidential Information**

The term "Confidential Information" means:

- a) in relation to the Supplier, the System (including but not limited to the Software) and any and all information, material, know-how or data relating to the System, whether written, graphic, verbal or in electronic readable or any other form, furnished directly or indirectly to the Customer by the Supplier or any of its associates, employees, agents, solicitors or accountants, except as provided by the Florida public records law;
- b) in relation to the Customer, any information disclosed by the Customer to the Supplier pursuant to this Agreement which is in written, graphic, machine readable or other tangible form and is marked "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, except as provided by the Florida public records law.

Notwithstanding the foregoing, training manuals for paramedics and information acquired from normal day-to-day operation of the tablet software is not Confidential Information.

### **13.2 Duty of Confidentiality**

Except as provided by the Florida public records law, each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as

set forth herein, and shall use reasonable efforts not to disclose such Confidential Information to any third party.

Except as provided by the Florida public records law, Customer shall not disclose the Software. Except as provided by the Florida public records law, Customer agrees not to take any action that would constitute misappropriation of the Software.

### **13.3 Exceptions**

Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which:

- a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;
- b) was known to the receiving party without restriction at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
- c) is disclosed with the prior written approval of the disclosing party;
- d) was independently developed by the receiving party without any use of the Confidential Information;
- e) becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights;
- f) is disclosed generally to third parties by the disclosing party without restrictions similar to those contained in this Agreement; or
- g) such disclosure is required by law or an order or requirement of a court, administrative agency, or other governmental body, or as part of the State of Florida Public Records Law.

## **14. SOFTWARE SOURCE CODE ESCROW REQUIREMENTS**

- 14.1** The Supplier shall, within thirty days of the Acceptance Date, deposit the source code of the Software with a mutually-agreed upon escrow agent (the "Escrow Agent"), located in the State of Florida, United States, at Customer's expense, and under escrow terms, acceptable to the parties, each acting reasonably.
- 14.2** The Supplier shall within thirty days of the installation of any Update or enhancements of the software deposit such Update with the Escrow Agent.

## **15. TERMINATION**

### **15.1 Termination for Cause**

The Customer shall not terminate this Agreement for breach by the Supplier unless such breach is material and unless the Customer has provided the Supplier with written notice of the breach and thirty days in which to cure the breach. The Supplier shall not terminate this Agreement for breach by the Customer unless such breach is material (and for greater certainty non-payment of any sum due to the Supplier is conclusively deemed to be material) and unless the Supplier has provided the Customer with written notice of the breach and thirty days in which to cure the breach.

### **15.2 Insolvency, Assignment, or Bankruptcy**

Either party may terminate this Agreement immediately upon written notice to the other party if:

- (a) the other party becomes insolvent;
- (b) the other party files or has filed against it a petition (or other document) under any bankruptcy law or similar law, which is unresolved within sixty days of the filing of such petition (or document);
- (c) the other party proposes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors;
- (d) the other party makes a general assignment for the benefit of creditors; or
- (e) a receiver, trustee, custodian or similar agent is appointed or takes possession of any material part of the other party's property or business.
- (f) Customer has not issued a purchase order within thirty (30) days of execution of this Agreement, Supplier shall have the right to terminate the Agreement on written notice to the customer without any liability on its part. Customer shall have the right at any time prior to issuance of the purchase order to terminate this Agreement on written notice to Supplier without any liability on its part. The obligation of the Customer, for payment, prior to the issuance of a purchase order is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds unless otherwise authorized by law.

This Agreement shall be construed and interpreted so as to ensure that the Customer shall at all times be in compliance with all applicable laws and ordinances.



### **Effect of Termination on Obligations**

Termination of this Agreement shall not affect any pre-termination obligations of either party under this Agreement, and any termination is without prejudice to the enforcement of any non-discharged obligations existing at the time of termination.

### **15.3 Duties upon Termination**

Upon any termination hereunder, including but not limited to termination in accordance with subsection 5.1(d) the Customer shall immediately cease use of the Software.

### **15.5 Source Code**

Upon the occurrence of any one of the following conditions or events, Supplier (MEDUSA) shall provide Customer (City of Fort Lauderdale) within forty-five (45) days from said event with machine-readable and human-readable copies of the source code with related documentation for the most current version of the Software that Supplier (MEDUSA) is obligated to provide to Customer (City of Fort Lauderdale) under this Agreement:

1. MEDUSA or any parent company, or joint venture party of MEDUSA has filed, or has had filed against it, a petition for bankruptcy;
2. MEDUSA has applied for or consented to the appointment of a trustee, receiver or other custodian, or has made a general assignment for the benefit of its creditors;
3. MEDUSA has become insolvent or generally has failed to pay its debts as they become due;
4. MEDUSA has ceased to do business or has discontinued the sale, licensing or maintenance of the Software or has announced plans for the same;
5. MEDUSA has ceased or failed to provide the City with maintenance or other support services for which the City has paid pursuant to the terms of this Agreement for the License Agreement, except due to breach or termination without cause by the City; or
6. MEDUSA has ceased its corporate existence.

The source code and documentation provided shall include all information and technical documentation necessary and sufficient to enable a reasonably skilled computer programmer or analyst to maintain or enhance the Software without the aid of the Supplier. In the event of any such condition pursuant to which the Customer obtains a copy of the source code and related documentation, Customer shall have such rights to reproduce, copy, use and modify the Software thereto, as reasonably necessary for Customer to upgrade and maintain the Software.

## **16. REASONABLENESS AND GOOD FAITH**

The Customer and the Supplier shall act reasonably in exercising any discretion, judgment, approval, or extension of time which may be required to affect the purpose and intent of this Agreement. Whenever the approval or consent of a party is required under this Agreement, such consent shall not be unreasonably withheld or unreasonably delayed.

## **17. NON ASSIGNABILITY**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however that neither party shall assign any of its rights nor obligations under this Agreement, without the written consent of the other party.

## **18. NO WAIVER**

No waiver of any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement.

## **19. FORCE MAJEURE**

Notwithstanding anything else in this Agreement, and except for the obligation to pay money, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the party charged with a default, including, but not limited to, strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, nuclear disasters, or default of a common carrier.

## **20. , NOTICES**

- a. Any notice, demand or request herein provided or permitted to be given by any party hereto to another may be served by hand delivery, by fax or by prepaid registered mail, delivered, faxed or addressed as follows:

1. To the Customer at:

City of Fort Lauderdale  
Attention: Chief Otis Latin  
528 NW 2nd Street  
Fort Lauderdale, FL 33311  
U.S.A.  
Telephone No. (954) 828-6823  
Facsimile No. (954) 828-6843

2. To the Supplier at:

Rick Underhill  
MEDUSA Medical Technologies Inc.  
President & CEO  
Suite 1014  
2000 Barrington Street  
Halifax, Nova Scotia, Canada B3J 3K1  
Phone: 902-420-9227

Fax: 902-422-2178

With a copy to:

Canadian International Capital Inc.  
Suite 1014, Cogswell Tower  
2000 Barrington St.  
Halifax, NS Canada B3J 3K1  
Phone: 902.420.9434  
Fax: 902.422.2178

- b. Service of any such notice, demand or request shall be deemed complete on the day of actual delivery, if sent by hand delivery, on the day of faxing, if sent by fax, or if that day is not a Business Day, then on the next following Business Day, or on the date of receipt of the registered mail, evidenced, by the proof of delivery issued by the post office.
- c. Any party may at any time give notice in writing to the other of any change of address or fax number of the party giving such notice and the address therein specified shall be deemed to be the address of such party for the giving of notices hereunder.

20.1 Within thirty (30) days following the effective day of this agreement Supplier shall elect a secretary of the Supplier's corporation and amend accordingly its 2004 For Profit Corporation Annual Report to the Florida Secretary of State. During the term of this Agreement Supplier's board of directors shall include a secretary.

## **21. GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida, ordinances of the City of Fort Lauderdale, Florida, ordinances of Broward County, Florida, that are applicable in the City of Fort Lauderdale, Florida, and the laws of the United States of America. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts of the State of Florida and of the United States of America, and the parties agree and submit to the personal and exclusive jurisdiction of these courts. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Broward County, Florida, or in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida. The Customer may enforce in the United States or Canada or in both countries a judgment entered against the Supplier. The Supplier waives any and all defenses to the Customer's enforcement in Canada of a judgment entered by a court in the United States.

## **22. INDEPENDENT CONTRACTORS**

MEDUSA shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment with

respect to its employees, of any and all contributions or taxes for social security, unemployment insurance, and retirement benefits, pensions, and annuities now or hereafter imposed under any local, state, provincial, or United States or Canadian federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by MEDUSA for work performed under the terms of this contract, and further, agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under such laws, and MEDUSA also agrees to hold harmless the City from such contributions or taxes or liability.

### **23. PROJECT MANAGER**

MEDUSA designates as its initial Project Manager Joe Thomas, whose telephone number is (902) 429-0609. This Project Manager shall have the power and authority to make management decisions relating to vendor obligations hereunder and shall serve as the initial point of contact.

### **24. SUBSTITUTION AND CHANGES**

Substitution or changes may be made in writing to this Agreement, by mutual consent of the two parties.

### **25. AGREEMENT EXTENSION AND MODIFICATION CLAUSE**

This Agreement may be modified or extended in accordance with the following procedures. If both parties to this Agreement agree that such changes would be of a minor and non-material nature, such changes may be effected by a written statement which describes the situation and is signed, prior to the effectiveness, by both parties. In the event that the changes are determined by either or both parties to this Agreement to be of a major or complex nature, then the change shall be by formal amendment of this Agreement signed by the parties and made a permanent part of this Agreement.

### **26. ENTIRE AGREEMENT**

MEDUSA's written response to R.F.P. 232-8846 submitted April 1, 2003, the corresponding Request for Proposals, and the terms and conditions herein contained, including all schedules hereto, constitute the entire agreement between the parties and supersede all previous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof. The terms and conditions of the Agreement shall automatically apply to each transaction between the parties contemplated by this Agreement notwithstanding any additional or different terms and conditions of any ordering document or other instrument submitted by the Customer.

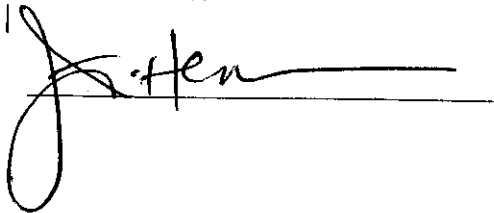
### **27. RECORD AUDIT RETENTION**

MEDUSA agrees to make all pertinent books and records and other documents pertaining to this Agreement available to the Customer and Customer's designated agents and representatives for purpose of audit and examination upon request during the term of this

Agreement and for a period of three (3) years following completion of all work pursuant to this Agreement. In the event an audit is commenced MEDUSA shall retain such books and records for a period of three (3) years following completion of all work pursuant to this Agreement or until completion of the audit, whichever is later. Nothing in this section shall give the Customer the right to have access to view or inspect any source code or other confidential or proprietary information of MEDUSA, except as otherwise provided by the Florida public records law or other applicable law or ordinance.

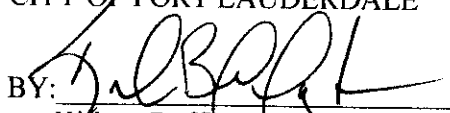
IN WITNESS WHEREOF the parties have caused this Agreement, which shall inure to the benefit of and be binding upon the successors of the respective parties, to be signed and entered as of the date first mentioned above.

WITNESSES:



(CORPORATE SEAL)

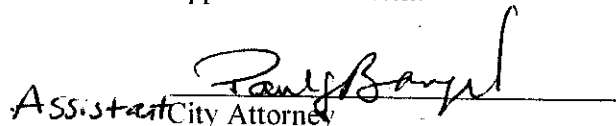
CITY OF FORT LAUDERDALE

BY:   
Kirk Buffington, Assistant Director of  
Administrative Services

ATTEST:

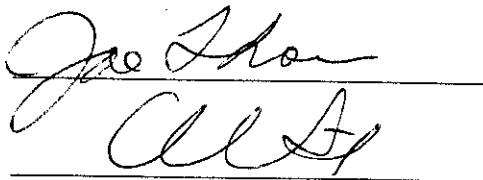
  
City Clerk

Approved as to form:

  
Assistant City Attorney  
100 N. Andrews Avenue, 7<sup>th</sup> Floor  
Fort Lauderdale, FL 33301

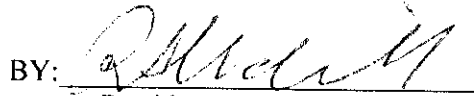
Date: SEPTEMBER 27<sup>th</sup>, 2004

WITNESSES:



(CORPORATE SEAL)

MEDUSA MEDICAL TECHNOLOGIES INC.

BY:   
President


ATTEST:



Print Name: C. THIS McNAMARA  
Secretary

STATE OF NS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of SEPTEMBER, 2004, by RICHARD W. UNDERHILL, for MEDUSA MEDICAL TECHNOLOGIES, INC., a Nova Scotia corporation authorized to transact business in the State of Florida.

  
\_\_\_\_\_  
Signature, Notary Public, State of \_\_\_\_\_  
Print. Type, or Stamp Commissioned Name of  
Notary Public:

**CHRISTOPHER G. SOMERS**  
A Notary Public in and for the  
Province of Nova Scotia

Personally known X OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**SCHEDULE A**  
**SOFTWARE & DOCUMENTATION**

1. Siren ePCR™ Suite Version 1.4 Release Number:

Includes software for:

- 14 tablet devices Siren™ Client User
- 13 Siren™ Client administration desk top user
- 14 Communications Wireless Modules customization software (C.A.D. Intergraph Interface)
- 1 Siren™ Server Administration
- 1 Siren™ Server User
- 1 Siren™ Client Administrator
- 1 Siren™ Data Management – Graphical Analysis Server Admin
- 1 Siren™ Data Management – User Defined Administrator
- 7 Siren™ Data Management – User Defined User
- 8 Siren™ Data Management – Graphical Analysis User
- 14 LIFEPAK® 12® Integration (including events, vital signs and waveforms)
- 1 Microsoft SQL Server License
- 2 Windows 2000 Server Licenses
- Menu driven State of Florida Aggregate Report Export in the State's desired format
- Data dictionary of all table and field names including field descriptions and definitions of the type of link and relationship

## **SCHEDULE B**

### **TRAVEL SCHEDULE**

Project Manager Outline Project Scope - One Week - One MedUSA Staff member

Technology Set-up, Testing and Network Configuration – Two Weeks - One MedUSA Staff member

Pen Table Training onsite – Two Weeks - One MedUSA Staff Member

Report Writer Training – Three Days – One MedUSA Staff Member

Inserted City of Fort Lauderdale Travel Allowance and Subsistence Policy



**SCHEDULE C  
PURCHASE PRICE**

- All pricing in US dollars
- Licenses for 14 tablet computers
- Licenses for 13 desktop computers
- Data Management Report Service license = 1
- Report User License = 1
- SQL Server License = 1
- Windows 2000 Server License = 2
- Total Machine installation for Data Management Report Writer tools  
=2
- Interfaces to LIFEPAK®12, Intergraph CAD, Billing Export and Florida State Report Export
- Pricing includes Implementation project management, table configuration, equipment set-up and infrastructure testing, training to core group of medics and client in-house trainers, and report writing training.
- Pricing includes user manuals and training documentation for Siren ePCR™ clients
- Travel and out-of-pocket costs are additional (Schedule B)

**Total Price \$77,490**

**SOFTWARE SERVICE AND MAINTENANCE**

**ONE TIME PROJECT IMPLEMENTATION COST \$10,000**

Cost per year

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>TOTAL</b>	Included	\$13,734	13,734	13,734	\$13,734

Total five years of Software Maintenance: **\$54,936**

**TOTAL COST FOR SOFTWARE SYSTEM AND MODULES TO  
INCLUDE FIVE YEARS WARRANTY AND MAINTENANCE AND  
IMPLEMENTATION \$142,426**

## SCHEDULE D BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by and between the City of Fort Lauderdale, Florida (hereinafter referred to as the "Covered Entity" or "City") and MEDUSA Medical Technologies, Inc., (hereinafter referred to as "Business Associate").

### **WITNESSETH**

WHEREAS, the Parties have established a business relationship in which Business Associate, acting for or on behalf of Covered Entity but not as a health care provider, receives Personal Health Information as defined by the Health Insurance Portability and Accountability Act ("the Act"); and

WHEREAS, the Parties desire to comply with the requirements of the Act's Privacy Rule as further set out below.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the parties hereto agree to the following provisions:

### **DEFINITIONS**

- 1.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, as codified in 45 CFR § 164.501, et seq.

### **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

Business Associate agrees to the following:

- 2.1 **Not to Use or Disclose PHI Unless Permitted.** Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- 2.2 **Use Safeguards.** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- 2.3 **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

**2.4 Report Inappropriate Disclosures of PHI.** Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

**2.5 Compliance of Agents and Subcontractors.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

**2.6 Access.** Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524, if the Business Associate has Protected Health Information in a designated record set.

**2.7 Amendments.** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in a reasonable time and manner, if Business Associate has protected health information in a designated record set.

**2.8 Disclosure of Practices, Books and Records.** Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

**2.9 Documentation of Disclosures.** Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

**2.10 Disclosures for Accounting.** Business Associate agrees to provide to Covered Entity or an Individual, within ten (10) business days of receipt of a written request from the Covered Entity or an Individual, information collected in accordance with Section 2.9 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

#### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

**3.1** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purposes set forth in the base agreement to which this Business Associate Agreement is attached, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

#### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

**4.1 Management and Administration.** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

**4.2 Required by Law or With Reasonable Assurances.** Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**4.3 Data Aggregation.** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

**4.4 Violations of Law.** Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

#### **OBLIGATIONS OF COVERED ENTITY**

**5.1 Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

**5.2 Individual Permissions and Revocations to Release PHI.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

**5.3 Restrictions on Uses and Disclosures.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

#### **PERMISSIBLE REQUESTS BY COVERED ENTITY**

**6.1** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Original Contract, the Business Associate may use or disclose protected health information for data aggregation or management and administrative activities of Business Associate.

## **TERM AND TERMINATION**

7.1 **Term.** The Term of this Agreement shall be effective as of date of execution by the parties, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, or if it is illegal to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Section.

7.2 **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Original Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
- b. Immediately terminate this Agreement and the Original Contract if Business Associate has breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

## **EFFECT OF TERMINATION**

8.1 Except as provided in paragraph (8.2) of this section, and except as otherwise provided by Florida law, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

8.2 In the event that Business Associate determines that destroying the Protected Health Information is infeasible or illegal, Business Associate shall provide to Covered Entity notification of the conditions that make destruction infeasible or illegal. Upon Covered Entity's concurrence that destruction of the Protected Health Information would be infeasible or illegal, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the destruction infeasible or illegal, for so long as Business Associate maintains such Protected Health Information.

## **MISCELLANEOUS**

9.1 A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

9.2 The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

9.3 The respective rights and obligations of Business Associate under Sections 7.1 and 7.2 of this Agreement shall survive the termination of this Agreement.

9.4 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

9.5 Business Associate agrees to indemnify, defend and hold harmless the Covered Entity, and Covered Entity's officers, employees, agents, and subcontractors against any actual and direct losses suffered by the Indemnified Party(ies) and all liability to third parties arising out of or in connection with Business Associate's or Business Associate's officer's, employee's or agent's breach of this Agreement or any negligent or wrongful act or omission by Business Associate or any of Business Associate's officers, employees, or agents, including Business Associate's failure to perform its obligations under the Privacy Regulations. Accordingly, , the Business Associate shall reimburse the Indemnified Party(ies) for any and all actual expenses, including reasonable attorney's fees, which may be imposed upon any Indemnified Party(ies) by reason of any suit, claim, action, proceeding, judgment, or demand by any third party resulting from or arising out of the Business Associate's or Business Associate's officer's, employee's, or agent's breach of this Agreement or other act or omission .

9	4	1	1
CH	SEC	SUBJ	PAGE

## CITY OF FORT LAUDERDALE

DATE ISSUED:  
12-10-02

# POLICY and STANDARDS MANUAL

## CHAPTER:

FINANCIAL AND PURCHASING

9

## SECTION:

TRAVEL ALLOWANCE AND  
SUBSISTENCE POLICY

4

SUBJECT: TRAVEL ALLOWANCE AND SUBSISTENCE POLICY

1

## PURPOSE

To establish travel allowance and subsistence policy for all employees performing directed travel of an official nature.

The policy is designed to cover reasonable employee expenses while traveling on City business and to promote the prudent use of public funds. Employee reimbursements are not intended to be employee compensation or an employee benefit program. The policy is designed to cover all employee travel. A few situations will require exceptions, due to their unusual nature. Any exceptions must have prior written approval of the City Manager, unless they are an emergency. In such an emergency, an after the fact written explanation will be required, from the traveler. Reimbursement will be contingent upon City Manager approval of the explanation.

## PROCEDURE

## 1. EXTENDED TRAVEL:

Extended travel may be requested by the traveler, or dictated by significantly lower airfares.

- a. The City will not require a traveler to travel on weekends to reach a lower net cost of travel. However the City does encourage travelers to travel on weekends when it will result in significantly lower net cost of travel.
- b. If requested by the traveler, extended travel may be allowed at the beginning or end of the trip, in order to provide savings.
- c. Extended travel will not occur during the traveler's normal work time, and the traveler will be reimbursed for per diem and lodging during the extended travel time as long as the total net cost results in a saving to the City.
- d. If a traveler is combining City business and vacation, and part of the extended travel time consists of a bridge between the two, no per diem or lodging for that bridge time will be allowed.

C = Change

- N e. If an employee chooses to use a personal vehicle for  
| transportation, the City will reimburse the lower of the lowest  
| target airfare plus estimated ground transportation costs or the  
| prescribed mileage reimbursement plus appropriate tolls, whichever  
| is lower. When choosing between Air Fare and use of personal  
| vehicle the employee or Travel Coordinator should complete Form  
N "Lowest Cost Analysis", Appendix III as found in this PSM.

## 2. AIR FARES:

- N a. Prior to airfare being booked, travel should be approved and  
N registration processed. The City will reimburse the traveler for  
the cost of the lowest airfare (Target Airfare) for a particular  
trip. The lowest airfare is defined as the lowest possible fare  
for the trip, using Fort Lauderdale Airport departure and return,  
flying on any regularly scheduled airline allowing for intermediate  
stop(s). Employees are expected to secure airline reservations in  
C an appropriate manner consistent with obtaining the lowest cost.

Employees, who obtain their tickets in advance and are obligated to  
pay for the tickets prior to the trip, will be able to have the  
cost of the ticket reimbursed if a copy of the ticket and their  
credit card invoice is presented with the prescribed form (Travel  
Expense Certificate) to the Travel Manager. An approved Travel  
Request (TA) will be required when this payment is requested.  
N Generally, air tickets should be not be purchased greater than  
| thirty (30) days in advance; otherwise the airfare may not be  
N reimbursed prior to the trip.

- b. If an employee or traveler wishes to take a flight, or use a  
particular airline, for personal reasons, and the cost exceeds the  
amount for a Target Airfare (lowest airfare), the cost will only be  
reimbursed for the lowest amount. Premium cost for first class or  
N business class airline tickets will not be reimbursed.

- c. Target airfare and related expenses (obtained by proper  
preplanning) will be used as the guideline in comparing costs of  
personal car vs. air travel. The employee will be reimbursed for  
the lesser amount.

- d. If the traveler is reasonably sure that a particular trip will be  
taken, it is recommended that the lowest possible airfare be  
utilized, even though there may be a penalty for cancellation or  
changes. If a non-refundable ticket is obtained, and the trip  
cannot be taken due to required work or documented personal  
problems that are approved by the Travel Manager and the  
appropriate Department Director, the City will assume  
responsibility for any penalty.

- N e. If a ticket is unused, the Travel Officer and Accounts Payable  
| shall be notified in writing of all particulars. Under the new  
| airfare rules set in September of 2002 by the major air carriers,  
| unused tickets represent a 100% loss to the City, and must be  
| justified and the reason for non-use approved by the City Manager's  
| Office. It is the employee's responsibility to ensure that the  
N unused ticket be used at the earliest possible time.



3. FREQUENT FLYER POINTS:

- a. The City, at this time, will allow the employee traveling on official business, to obtain frequent flyer points. The City does reserve the right at a future date, to capture frequent flyer points, and use them for official City purposes. Employees or travelers are prohibited from choosing a more expensive flight or incur any additional costs in order to accumulate frequent flyer credits.

- b. Travelers are encouraged to use frequent flyer credits obtained from City travel, to reduce official expenses.

a. Employees are encouraged to get rides to and from local airports.

C  
C  
N  
N

b. If an employee must park at the airport, the City will reimburse for costs incurred, up to the current long-term daily rate in effect at Fort Lauderdale International Airport. Parking will not be reimbursed for parking in SHORT TERM area. Receipts must be furnished. Employees eligible for mileage reimbursement may claim their travel to and from the airport and their normal work place, when using their personal vehicles. The mileage should be claimed on the monthly form submitted to the Payroll Section of the Finance Department. Total parking reimbursement shall not exceed \$60.00.

C  
I  
C

c. If alternate airports are used for cost savings reasons for the city, the employee will be reimbursed for long-term parking or Shuttle Service to and from these locations. The traveler, indicating a total lower cost was obtained by using alternate airports, must furnish a cost analysis.

N  
N

d. The traveler is expected to utilize the least expensive means of transportation from the airport to the hotel, etc. A taxi should only be utilized if that is the least expensive means of transportation. Receipts must be provided for this expense. Credit card transactions are not acceptable as receipts for the purpose of reimbursement.

5. RENTAL CARS:

a. Use of rental cars may be approved if:

(1) It is required by the nature of the task or travel requirements.

(2) It will provide less cost to the City, compared to other types of transportation.

N  
I  
N

(3) If renting a car, the employee must have personal insurance in accordance with PSM 8.1.1. and must have a valid drivers license (PSM 6.16.1.)

b. All rental cars must be approved by the appropriate Department Director or Assistant City Manager.

C

c. The smallest rental car (least expensive) commensurate with the task or number of passengers must be utilized. The employee is expected to obtain the best rental rate, after making comparisons. The Procurement Division and the City travel agency will maintain information on State of Florida Contract Rates, plus other special offers which may be available.

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d. At the employee's option, the City will reimburse for Collision Damage Waiver (CDW) insurance for rental cars. The City recommends that employees purchase CDW when renting a vehicle.

e. As a general practice, rental cars will not be approved if the employee is staying at or in the near proximity of the conference hotel or meeting location.

- C f. Except for the use of a State Contract rate, whereby fuel may be included in the rental rate, employees obtaining rental cars, shall not accept any provisions for fuel to be provided by the rental agency. It is normally much less expensive if the rental car is returned full of fuel, paid for by the renter at a private gasoline station. When fuel receipts are presented, they will be reimbursed by the City. (NOTE: State Contract requires the contract vendor, who will reimburse for fuel expenditures, for in State rentals.)

C 6. PERSONAL VEHICLE/CITY VEHICLE/CAR POOLING

- C a. Personal vehicles used for transportation by all employees outside the "tri-county" area will be reimbursed at the approved rate per mile. Employees below Management Level III may be reimbursed within the tri-county area. The Travel Manager will  
C utilize either an appropriate software program or the FDOT  
C Official Highway Mileage found on the World Wide Web and on the  
C City's Lauderlink for determining miles between specific  
C locations. The Travel Manager's acceptable mileage must be final.
- b. The City will reimburse employees for the use of their personal vehicle at the rate allowed by the Internal Revenue Service. The mileage reimbursement that is paid when personal vehicles are used includes costs for fuel, insurance, repairs, etc. Toll road charges will be reimbursed when personal vehicles are used and valid receipts are furnished, if the charge is \$2.00 or more.
- c. If a City vehicle is utilized, tolls and fuel will be reimbursed. The Fleet administrator has provided instructions on what actions to take if a City-owned car needs repair outside of the Fort Lauderdale area. Receipts will be required.
- d. When more than one City employee is attending a conference, meeting or on official business away from Fort Lauderdale, they are expected to "car pool." Only one mileage reimbursement will  
C be made for groups of four employees or less. Allocation of the  
C mileage reimbursement shall be determined by the Travel Manager. Exceptions may be considered to this policy if an employee is an officer of the organization or has other official duties that require he/she must arrive/leave earlier/later than normal or valid reasons approved by the Department Director and the Travel Manager.
- e. An employee may be allowed reasonable, additional mileage, if official business requires a personal vehicle be utilized for local trips while going to or at the destination city. A statement must be attached to the Travel Expense Certificate explaining the need and the number of miles traveled. Additional mileage will not be allowed for travel related to the consumption of meals or for entertainment.
7. HOTEL RATES:
- a. Room sharing is strongly encouraged as a cost saving measure but it is not required. In high cost areas such as New York, Chicago, Los Angeles, etc., the Department/Travel Manager may require employees to share rooms.

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N b. When an employee is attending a conference, the City will reimburse for a room at the headquarters hotel, unless the traveler wishes to find a convenient nearby location that will result in a savings. Local transportation and parking must be a consideration but will be reimbursed if a savings can accrue to the City. Although conference rates are generally offered, employees are encouraged to investigate availability of government room rates at the conference hotel.

N c. The City will reimburse for the least expensive room at the conference hotel. If a spouse is accompanying, any higher charge for an additional person in the room, will be the responsibility of the employee. The City will reimburse for state or local taxes that are charged, for employee's room only. As a normal policy the City will not pay the hotel directly, therefore it is appropriate for sales tax to be charged. If the Hotel requires a credit card for making reservations and if the payment is required before the trip takes place, the City will advance the amount of the charge, along with the airfare at one time, unless the traveler has a corporate charge card.

#### MISCELLANEOUS EXPENSE ALLOWANCE WHEN STAYING OVERNIGHT:

C The City will pay a daily allowance of \$5.00 per night, to the employee. This daily allowance is to cover non-meal tips, telephone calls (other than business), other hotel service charges, laundry, and incidental expenses.

C 9. TRI COUNTY TRAVEL: (Broward, Miami-Dade and Palm Beach Counties)

#### a. Tolls and Parking:

- D (1) If a City car is used, tolls and parking will be reimbursed by the use of petty cash procedures. The vehicle # must be shown on the petty cash reimbursement form.
- (2) If a personal car is used, mileage will be reimbursed at the current approved rate (Except for Management levels, I, II, and III). Tolls of more than \$2.00 will be reimbursed, with receipt, except for Management levels I, II, and III.
- (3) If the employee is on official City business, parking fees will be reimbursed for employees. Casual charges for meters, amounts of \$2.00 or less will not be reimbursed. Parking receipts will be required and should be paid using petty cash.

#### b. Meal Reimbursement:

- C (1) If a meal is part of the official program, paid for as part of the registration, it will not be reimbursed separately.
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N (2) If the employee is required, as part of the reason for travel, to be out of the City and returns home after 8:00 PM, the cost of dinner will be allowed in accordance with the per diem schedule in paragraph 11.a. A receipt must be furnished for this expense. Payment for this meal shall be via the department's petty cash.

- (3) Meals will be reimbursed in accordance with any applicable labor agreement. All meal reimbursements will require a receipt and will be paid by petty cash.

#### Hotels:

Hotel expenses in the tri-county area will not normally be reimbursed or authorized. Deviation to this policy may be approved when appealed to the Department Director and the City Managers Office.

#### d. Advances:

Cash advances will not be provided for travel in the tri-county area.

### 10. TELEPHONE CALLS:

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- a. Personal calls will not be reimbursed. They are considered part of the daily miscellaneous expense allowance. A business Telephone log should be maintained and completed. Traveler should use the appropriate 800 number for accessing the City's Voice Mail System, or the City's dial up network. When accessing the dial-up network, failure to use the 800 number may be cause for non-reimbursement.
- b. Official business and FAX calls will be reimbursed with receipts and proper identification, including the name of the person or office called and purpose of call. Receipts or documentation must be with furnished with other travel reconciliation papers. Calls made on a personal credit card or charged to a phone number will not receive reimbursement.
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- c. THE TRAVELING EMPLOYEE CAN TALK TO ANYONE IN THE CITY, WHOSE PHONE IS ON THE 828 PREFIX. EMPLOYEES SHOULD DIAL 1-800-638-5283 (1-800-6FT-LAUD). THIS WILL ALLOW THEM TO ENTER THEIR VOICE MAIL BOX AND RECEIVE OR LEAVE MESSAGES. WHEN YOU ARE CONNECTED TO YOUR MAIL BOX, PRESS #, ANY FOUR DIGIT EXTENSION AND THEN #. THIS PROCEDURE WILL ALLOW THE CALLER TO TALK TO ANY ONE IN THE CITY'S "CENTRAL PHONE SYSTEM", WITHOUT MAKING A TOLL CALL. THE CITY WILL BE CHARGED FOR THESE CALLS, THEREFORE THEY SHOULD BE USED ONLY FOR OFFICIAL AND NECESSARY CITY BUSINESS.

### 11. MEAL REIMBURSEMENT:

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- a. The City will use the following meal allowance schedule for meal rates. Breakfast - \$10.38, Lunch - \$10.55, Dinner - \$24.40. Meal allowances include taxes and normal tips. In addition, an additional 5% may be added to cities determined by the Travel Manager to be above the average meal allowance as shown above. In most cases, if a continental breakfast is provided by the hotel or conference, this shall suffice as an included breakfast and will not be reimbursed. Exceptions will be approved by the Travel Manager.
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- b. The employee may not claim any meals which are included as part of the registration fee or are otherwise complimentary. If an employee chooses not to participate in a meal function that is included or otherwise furnished, reimbursement will not be provided for that event.

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c. If the employee cannot arrive at the conference or the start of the formal meetings by leaving the morning of the opening day, overnight hotel expenses will be allowed. If an employee may leave home by 6:00 am and arrive at the conference prior to the start, overnight expenses will not be reimbursed. When disputed, determinations of travel time shall be determined by the Travel Manager, using appropriate mileage software, and the Travel Managers determination shall be final.

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d. If an employee can return to Fort Lauderdale, driving or flying, at or before 10:00 PM, overnight hotel and meal reimbursement will not be allowed. Dinner reimbursement shall be allowed for a traveler arriving home after 8:00 P.M.

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e. Breakfast, on the departure day from the City, will not be reimbursed, unless the traveler is departing by air, and the flight departure is 7:00 A.M. or earlier

12. TRAVEL ADVANCES AND REIMBURSEMENTS/TRAVEL CHARGE CARDS:

a. For City employees who have been offered an opportunity to receive a travel charge card and declined, cash advances will not be provided.

b. For City employees who have not been offered a travel charge card, cash advances may be given. The Travel Request should be submitted three weeks prior to commencement of the trip.

c. If a cash advance has been provided, when the reconciliation after a trip is completed, amounts of \$2.00 or less need not be paid to the City nor will the traveler be reimbursed for these amounts.

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d. Traveler's, who have shown a continued pattern of not submitting their Travel Expense Certificate within the allowable five (5) days, shall not be allowed future travel advances. Determination of the continued pattern shall be made by the Travel Manager and the Accounts Payable Supervisor.

13. SUBMISSION OF TRAVEL REQUEST FORMS:

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a. Travel Request forms should be submitted at least three weeks prior to the departure date. A separate form is required for each traveler. The traveler will be provided with an estimate of the reimbursable expenses prior to departure. A COMPLETE COPY OF ALL AVAILABLE BROCHURES OR PROGRAMS DESCRIBING THE CONFERENCE (if that is the purpose of the trip) MUST BE SUBMITTED WITH THE TRAVEL REQUEST. IF A COMPLETE PROGRAM IS NOT AVAILABLE AT THE TIME THE TRAVEL REQUEST IS SUBMITTED, A COPY MUST BE PROVIDED WITH THE RECONCILIATION FORMS (EXPENSE CERTIFICATE).

b. Expense Certificates, receipts, and related items, are to be submitted to Accounts Payable in the Finance Department, on form F-168, "Travel Expense Certificate" (See Appendix II) within five days after completion of the trip. Each traveler must sign his/her own request for reimbursements.

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c. In emergency situations, an employee may be required to travel without submitting a Travel Request. "After the Fact" travel is to be discouraged, and should be used only in emergency situations where time will not allow normal procedures to be followed. After the Fact travel reimbursement requests, must indicate the time the employee left and returned to the City. Reimbursement for "After the Fact" travel incidents, which do not include the emergency nature of the travel, may not be reimbursed. The memo stating the emergency nature of the travel must be signed by a department head, or Assistant City Manager, or City Manager, depending on whom is traveling. (i.e.; a department head CANNOT approve his/her own emergency travel)

14. FISCAL YEAR OVERLAP:

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Travel that occurs in the next fiscal year will be approved out of the current fiscal years funds at the discretion of the Finance Department depending on when received and date of travel. The required prior payment should be provided in September of the current fiscal year in accordance with the year-end closing procedures.

15. TRAVEL CHARGE CARDS:

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- a. Travel charge cards may be approved for issuance by the card company for any City employee, when requested by the appropriate Department Director or if determined to be appropriate by the Travel Manager due to the employee's travel pattern.
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- b. Employees who receive a City sponsored travel charge card have an obligation to only use the card for legal expenditures. Employees are expected to pay their charge card invoices in a timely manner. Failure of the employee to pay for the charges prior to the due date brings discredit upon the City and may therefore jeopardize the entire travel charge card program. Department Directors will be notified when their employees appear on the delinquent payment list that is provided by the charge card program. The American Express ghost card should only be used for travelers who have no other means of making airfare arrangements, or for job candidate travel, when deemed appropriate. The American Express ghost card cannot be used if an employee has either a travel card or has declined a travel card. The Ghost card cannot be used for any other travel expenses except for the booking of airfare with the contract travel agent. These numbers are not recognized by the airlines, internet booking sites, or any other travel provider.
- c. Any employee who has a City sponsored travel charge card cancelled will not be entitled to advance travel funds. Employees who have been offered a charge card, but declined, will not be provided advances.
- d. Charges made on the City sponsored travel charge card are the personal responsibility of the employee. In no event will the City be responsible for payment of any charges.

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N e. Since the travel charge card program is sponsored by the City, the City reserves the right to cancel any or all cards at any time or to change program providers if deemed in the best interest of the City.

16. NON EMPLOYEE TRAVEL, REIMBURSED BY THE CITY:

C Non-employee travel will follow the same policies as those for employees. The City Manager's office approval is required prior to making airline reservations for non-employees. The traveler must provide the City his or her Social Security Number for Internal Revenue Service reporting purposes. The non-employee should be told to save all receipts (the Finance Dept. will accept copies) as a Form 1099 will be submitted to IRS and therefore will show as income to the non employee, or to the company.

N 17. JOB CANDIDATE OR CITY CONSULTANT TRAVEL:

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N a. A rental car may be authorized if the candidate or consultant is required to be in Fort Lauderdale for more than three days or is unable to find accommodations in close proximity to the hiring or using agency.
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C b. The Travel Manager will develop an approved "allowance rate" for candidates and consultants. The allowance will include a recommended Hotel rate, meal allowances, \$5.00 per day for incidentals, and a shuttle/taxi to and from the airport, if a rental car is not authorized. The allowance rate should be communicated to the candidate by the Human Resources Division. The City, at its option, may furnish the airline ticket and pay directly for the hotel room. The candidate will be appropriately reimbursed upon submission of all needed receipts.
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N c. If the American Express ghost card is used for travel arrangements, accounts payable must be informed of particulars (index code/name/department). The AMEX ghost card may NOT be used for payment of consultant air travel.
- d. Reimbursement will be made in accordance with existing travel policies and procedures. Expenses that are not in accordance with these policies will not be reimbursed.

18. RELOCATION REIMBURSEMENT:

- D a. The new employee must be made fully aware of all policies, rules and regulations concerning relocation by the Human Resources Division prior to initiating any activity.
- b. No limit on weight or cost will be placed on transportation or household goods due to wide variances in individual needs. Vehicles cannot be shipped as a "household good".
- c. Taking of transportation bids by the new employee will be required, and will be subject to review by the Travel Manager prior to initiating any activity.



- d. City will reimburse for packing, but not unpacking of household goods.
- e. Reimbursement will be provided for the transportation of only one vehicle, based upon the current mileage rate.
- f. If new employee resigns within 2 years he or she will reimburse the City on a monthly pro rata basis for all relocation expenses originally reimbursed by the City. See Personnel Policy.

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## 19. TRAVEL MANAGER:

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The Procurement and Materials Management Manager shall serve as the Travel Manager. He/she shall serve at the pleasure of the City Manager. Duties shall include:

- a. Review and approve/disapprove travel advance requests and after the fact reconciliation in accordance with the PSM policies.
- b. Calculate the estimated costs of each individual trip and provide this information to the traveler.
- c. Review and approve/disapprove travel expenses related to relocations for new employees.
- d. Administer travel related contracts such as Charge Cards, Travel Agency services, etc.
- e. Keep up to date changes in travel procedures and practices, recommends changes to our policies as needed.

## 20. TRAVEL AUTHORIZATION AND FUNDING:

- a. Department Directors shall have the authority to utilize their travel budget appropriation in a manner which they determine will further City and departmental objectives. While individual trips are often identified for budget justification, actual trips are to be taken at the discretion of the Department Director in accordance with these policies.
- b. Budgeted travel consists of those trips which costs can be accommodated within the adopted appropriation for the particular department (objects 50 and 51). Travel Requests (Form F-167, see Appendix I) are to be submitted to the Travel Manager at least three weeks prior to commencing of the trip for review, approval and assignment of TA #. The Travel Manager will calculate approved expenses, assign a TA travel number, and forward the forms to the Finance Department. The Travel Request Form shall be approved or counter signed by a supervisor. For instance, travel of a department head must be approved by an Assistant City Manager. Travel of an Assistant City Manager must be approved by the City Manager. Travel of the City Manager should be counter signed by an Assistant City Manager. The Finance Department will set up an appropriate file and return one copy of the Travel Request Form and a copy of the Estimated Travel Reimbursement document to the Department/traveler. Upon completion of the trip, a Travel Expense Certificate (Form F-168) will be submitted to the Finance Department with a copy of the required receipts.

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- c. Non-budgeted travel is travel whose costs will cause the department total travel appropriation to be exceeded. Travel requests for these trips must be approved by the appropriate Assistant City Manager. When submitting the request, the department must determine the method that will be used to pay for the travel. Any flow of funds from another object must be approved, accompany the Travel Request forms and be submitted for approval to the Assistant City Manager. Any contingency request will require City Commission approval.
- d. It is the responsibility of the individual departments to assure that travel accounts do not exceed budgeted amounts without approval of the appropriate City Manager.